

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**

FULL CIRCLE UNITED, LLC, a New York limited liability company,

Plaintiff,

v.

SKEE BALL, INC., a Pennsylvania corporation,

Defendant.

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SKEE BALL, INC., a Pennsylvania corporation,

Plaintiff,

v.

FULL CIRCLE UNITED, LLC, a New York limited liability company,

Defendant.

Case No.: CV11-5476 (DLI) (LB)

Consolidated with:

Case No. 11-CV-6277 (DLI) (LB)

**NOTICE OF RE-FILING OF SKEE  
BALL, INC.'S REQUEST FOR JUDICIAL  
NOTICE IN SUPPORT OF MOTION TO  
DISMISS OR STAY AND FOR A MORE  
DEFINITE STATEMENT, DOCUMENT  
NO. 8, PER OCTOBER 23, 2013 COURT  
ORDER OF HON. MAGISTRATE JUDGE  
LOIS BLOOM**

Honorable Judge Dora L. Irizarry, Presiding

Magistrate Judge Lois Bloom

Complaint in lead case filed: November 8, 2011

Complaint in consolidated case filed: October 5, 2011 (USDC, Northern District California)

Consolidated case transferred to EDNY:  
December 23, 2011

Counterclaim filed: January 27, 2012

(E-Filing)

**NOTICE**

TO: THE HONORABLE JUDGE DORA L. IRIZARRY, THE HONORABLE  
JUDGE LOIS BLOOM, AND TO ALL PARTIES AND THEIR ATTORNEYS  
OF RECORD:

PLEASE TAKE NOTICE that, pursuant to the October 23, 2013 Order of the Hon.  
Magistrate Judge Lois Bloom, SKEE BALL, INC. ("SBI"), the defendant in Case No. CV11-  
5476 (DLI) (LB), hereby re-files its Request for Judicial Notice in support of its Motion to

Dismiss or Stay and For a More Definite Statement, previously filed on January 20, 2012 as Document No. 8, which is attached hereto as Exhibit "A".

Dated: November 1, 2013

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# **Exhibit “A”**

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF NEW YORK

FULL CIRCLE UNITED, LLC, a New York limited liability company; ) Case No.: CV11-5476 (DLI) (LB)  
v. Plaintiff, ) ) **ORAL ARGUMENT REQUESTED**  
SKEE BALL, INC., a Pennsylvania corporation, ) ) **Documents Filed Herewith:** Notice of  
Defendant. ) ) Motion; Memorandum of Law; Declaration of  
 ) ) Richard J. Idell; [Proposed] Order  
 ) ) Honorable Judge Dora L. Irizarry, Presiding  
 ) ) Magistrate Judge Lois Bloom  
 ) ) Complaint filed: November 8, 2011  
 ) ) **Date of Service: January 20, 2012**  
 ) ) (E-Filing)

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**REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION TO DISMISS OR STAY AND FOR A MORE DEFINITE STATEMENT**

Defendant SKEE BALL, INC., a Pennsylvania corporation (“SBI”) by and through his attorneys of record, hereby requests the Court to take judicial notice, pursuant to Rule 201 of the Federal Rules of Evidence, of the following documents and facts in support of SBI’s Motion to Dismiss or Stay and For a More Definite Statement. Said documents and facts are relevant to such Motion:

1. SBI is the owner of the registered trademark SKEE-BALL® (the “Mark”) for a “game in the nature of a bowling game and parts thereof.” The Mark was originally used in commerce on December 8, 1908. The Mark was registered on the Principal Register of the United States Patent and Trademark Office (“USPTO”) on May 5, 1929, under the Trademark Act of 1905. *See*, Declaration of Richard J. Idell filed herewith (“Idell Dec.” ¶ 4; Exhibit “A” to Idell Dec.

2. USPTO Trademark Applications and Registrations Retrieval (“TARR”) database print-out for SKEE-BALL® Mark dated January 18, 2012. *See*, Exhibit “A” to Idell Dec.

3. The Mark has been renewed without interruption and remains registered on the Principal Register of the USPTO as evidenced by Mark Registration Certificate issued in 1929, and subsequent renewal Registration Certificates. *See*, Idell Dec. ¶ 5; Exhibit “B” to Idell Dec.

4. The Mark is contestable pursuant to 15 U.S.C. § 1065 (Lanham Act § 15) and a Section 15 Affidavit was filed and accepted by the USPTO in or about October of 1954, as evidenced by USPTO Trademark Electronic Search System (“TESS”) database print-out dated January 18, 2012, showing the Section §15 Affidavit was filed and accepted. *See*, Idell Dec. ¶ 6; Exhibit “C” to Idell Dec.

5. Complaint filed by Defendant against Plaintiff on October 5, 2011, in the Northern District of California entitled *Skee Ball, Inc. v. Full Circle United, LLC*, Case No. CV11-4930 EDL (the “SBI Action”). Doc. No. 1 in SBI Action. The SBI Action alleges causes of action for: (1) Cancellation of Trademark [15 U.S.C. §§ 1064(3) and 1119]; (2) Trademark Infringement [15 U.S.C. § 1114]; (3) Trademark Dilution and Tarnishment [15 U.S.C. § 1125 (c)]; (4) False Designation of Origin [15 U.S.C. § 1125 (a)]; and (5) Unfair Competition. Doc. No. 1 in SBI Action. *See*, Idell Dec. ¶ 8; Exhibit “D” to Idell Dec.

6. Complaint filed by Full Circle in the within on November 8, 2011. Doc. No. 1 in within action. *See*, Idell Dec. ¶ 10; Exhibit “E” to Idell Dec.

7. Full Circle’s Motion to Dismiss or Transfer the SBI Action to the Eastern District of New York filed on November 9, 2011. *See*, Idell Dec. ¶ 12.

8. December 22, 2011, Order transferring the SBI Action to the Eastern District of New York. Doc. No. 20 in SBI Action. *See*, Idell Dec. ¶ 13; Exhibit “G” to Idell Dec.

9. The SBI Action was transferred to the Eastern District of New York on December 23, 2011, and has been assigned to the Honorable Judge Nicholas Garaufis and Magistrate Judge James Orenstein., and assigned Case No. 11-CV-6277 (NGG) (JO). *See*, Idell Dec. ¶ 13.

10. January 3, 2012, letter request to the Eastern District of New York that the SBI Action and the within action be deemed related. Doc. No. 25 in SBI Action; Doc. No. 4 in instant action. *See*, Idell Dec. ¶ 14; Exhibit “H” to Idell Dec.

11. January 9, 2012, letter request submitted by Plaintiff Full Circle United, LLC indicating Full Circle’s consent and agreement that the SBI Action and the case at hand are related. Doc. No. 29 in SBI Action; Doc. No. 5 in instant action. *See*, Idell Dec. ¶ 15; Exhibit “I” to Idell Dec.

12. Answer and Counterclaim filed on January 17, 2012, by Full Circle in the SBI Action. Doc. No. 30 in SBI Action. *See*, Idell Dec. ¶ 16; Exhibit “J” to Idell Dec.

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13. January 19, 2012, letter to the Court advising the Court of SBI's Motion to Dismiss, or alternatively to stay the Complaint in the within action on the grounds that the claims asserted in this action are compulsory counter-claims under F.R.C.P. 13(a), and, if litigated at all, should be litigated in Case No.: 11-CV-6277 (NGG) (JO), where they are now asserted as counter-claims. *See*, Idell Dec. ¶ 17; Exhibit "K" to Idell Dec.

Dated: January 20, 2012

KRAUSS PLLC

By: \_\_\_\_\_ /s/  
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